UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,249	09/11/2003	James V. Candy	IL-10941	8702

24981 7590 08/06/2010

Lawrence Livermore National Security, LLC
LAWRENCE LIVERMORE NATIONAL LABORATORY
PO BOX 808, L-703
LIVERMORE, CA 94551-0808

EXAMINER	
KISH, JAMES M	

ART UNIT	PAPER NUMBER
3737	

MAIL DATE	DELIVERY MODE
08/06/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES V. CANDY and DAVID H. CHAMBERS

Appeal 2009-008828
Application 10/661,249
Technology Center 3700

Before: LINDA E. HORNER, WILLIAM F. PATE III, and
STEVEN D.A. McCARTHY, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

---

[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

James V. Candy et al. (Appellants) seek our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 4-8, 21-25, 41-45, and 61-65, which are all of the claims on appeal. We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM.

THE INVENTION

Appellants' claimed invention relates to dynamic acoustic focusing for noninvasive treatment. Spec. 1, para. [0003]. Claim 4, reproduced below, is representative of the subject matter on appeal.

> 4. A method of noninvasively focusing acoustical energy on a mass within a substance to reduce or eliminate said mass, comprising the steps of:
>
> detecting the presence of said mass in said substance by applying acoustic energy to said substance,
>
> localizing said mass to determine its position within said substance,
>
> developing temporal signatures to drive said acoustical energy on said mass, and
>
> dynamic focusing said acoustical energy on said mass in said substance utilizing said temporal signatures to reduce or eliminate said mass, wherein said step of dynamic focusing said acoustical energy on said mass utilizes time reversal eigen-decomposition.

THE REJECTIONS

Appellants seek review of the following decisions by the Examiner:

1. Rejection of claims 4, 21, 41, and 61 under 35 U.S.C. § 103(a) as unpatentable over Fink (US 5,092,336) and Prada (Claire Prada & Mathias Fink, *Eigenmodes of the time reversal operator: A solution to selective focusing in multiple-target media*, 20 Wave Motion 151-63 (1994)).

2. Rejection of claims 5-8, 22-25, 42-45, and 62-65 under 35 U.S.C. § 103(a) as unpatentable over Fink, Prada, and Candy (US 2001/0037075).

Additionally, the Examiner provisionally rejected claims 4, 21, 41, and 61 on the ground of non-statutory, obviousness-type double patenting as being unpatentable over claims 2, 14, 29, and 44 of copending Application 11/904,823 in view of Prada. Ans. 3. Appellants present no arguments against this rejection, and as such, Appellants have waived any argument of error regarding the rejection. We summarily sustain this rejection.

ANALYSIS

Rejection of claims 4, 21, 41, and 61 under 35 U.S.C. § 103(a) as unpatentable over Fink and Prada

Appellants contend the Examiner has not established a prima facie case of obviousness because: the references do not teach all of the claim limitations, there is no reasonable expectation of success in the proposed modification, and the stated reason for combining the references is not valid. Br. 11-18.

The issue before us is whether the Examiner erred in the conclusion that the subject matter of claims 4, 21, 41, and 61 would have been obvious in view of Fink and Prada.

The Examiner found that the proposed combination meets each of the limitations of claims 4, 21, 41, and 61. Ans. 3-4. Appellants' contention that the references do not teach each limitation of the claim is supported by a summary of the references (Br. 11-14) and quotation of claims 4, 21, 41, and 61 (Br. 15-16). Appellants' summary of the references and quotation of the claims contains no explanation of how the claim language patentably distinguishes over the references, and thus fails to identify a basis for

concluding that any of the Examiner's findings are erroneous. *See* 37 C.F.R. 41.37(c)(1)(vii) (The appeal brief must include "[t]he contentions of appellant with respect to each ground of rejection presented for review in paragraph (c)(1)(vi) of this section, *and the basis therefor,* with citations of the statutes, regulations, authorities and parts of the record relied on." (emphasis added)). *See also Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential) ("An appellant may attempt to overcome an examiner's obviousness rejection on appeal to the Board by submitting arguments and/or evidence to show that the examiner made an error in either (1) an underlying finding of fact upon which the final conclusion of obviousness was based, or (2) the reasoning used to reach the legal conclusion of obviousness.").

Appellants' assertion that the references could not be successfully combined to reach the subject matter of claims 4, 21, 41, and 61 because the references do not teach or suggest all the claim limitations (Br. 16-17) is also unpersuasive. This argument is nothing more that a second unsupported assertion that the references do not teach or suggest all of the claim limitations.

Appellants' likewise fail to explain the basis for their assertion that the Examiner's rationale for combining the references is invalid (Br. 17-18). Rather, in support of this assertion, Appellants simply: quote the Examiner's rationale, provide a synopsis of the disclosure of each reference, and make a third unsupported assertion that the combined references do not meet the limitations of claims 4, 21, 41, and 61. Br. 17-18. The Examiner articulated reasoning with a rational underpinning for combining the references (Ans. 4), and in contesting that reasoning, Appellants' synopsis of the references does not explain why the reasoning provided by the Examiner is invalid. An

assertion that the rationale is invalid, without an accompanying explanation of why that is true, fails to persuade us that the rationale is in error.

Rejection of claims 5-8, 22-25, 42-45, and 62-65 under 35 U.S.C. § 103(a) as unpatentable over Fink, Prada, and Candy

Appellants' arguments against the second rejection parallel Appellants' arguments against the first rejection, contending that the Examiner has not made a prima facie case of obviousness because: the references do not teach all of the claim limitations, there is no reasonable expectation of success in the proposed modification, and the stated reason for combining the references is not valid. Br. 18-25.

Also parallel to the first rejection, the issue before us is whether the Examiner erred in concluding that the subject matter of claims 5-8, 22-25, 42-45, and 62-65 would have been obvious in view of Fink, Prada, and Candy.

The Examiner found that the proposed combination meets each of the limitations of claims 5-8, 22-25, 42-45, and 62-65. Ans. 4-5. Appellants' contention that the references do not teach each limitation of the claims is again supported by a summary of the references (Br. 18-19, incorporating the summary of Fink and Prada at 11-14) and quotation of the rejected claims (Br. 21-22). Appellants provide no explanation of how the claim language patentably distinguishes over the references, and thus fail to identify a basis for concluding that any of the Examiner's findings are erroneous.

As in the arguments made in rebuttal of the first rejection, Appellants' reasonable expectation of success argument is nothing more that a second

unsupported assertion that the references do not teach or suggest all of the claim limitations.

In contesting the Examiner's rationale to combine the references, Appellants' synopsis of the references (Br. 23-25) does not explain why the rationale provided by the Examiner is invalid.

CONCLUSIONS

The Examiner did not err in concluding that the subject matter of claims 4, 21, 41, and 61 would have been obvious in view of Fink and Prada.

The Examiner did not err in concluding that the subject matter of claims 5-8, 22-25, 42-45, and 62-65 would have been obvious in view of Fink, Prada, and Candy.

DECISION

We AFFIRM the Examiner's decision to reject claims 4-8, 21-25, 41-45, and 61-65 under § 103.

We AFFIRM the Examiner's decision to provisionally reject claims 4, 21, 41, and 61 on the ground of non-statutory, obviousness-type double patenting as being unpatentable over claims 2, 14, 29, and 44 of copending Application 11/904,823 in view of Prada.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

nlk

Lawrence Livermore National Security, LLC
LAWRENCE LIVERMORE NATIONAL LABORATORY
PO BOX 808, L-703
LIVERMORE CA 94551-0808